

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

13-CR-109 (JG)

-against-

United States Courthouse
Brooklyn, New York

LAWAL BABAFEMI,

Defendant.

Wednesday, August 12, 2015
2:00 p.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: KELLY T. CURRIE, ESQ.
United States Attorney
BY: ZAINAB AHMAD, ESQ.
HILARY JAGER, ESQ.
Assistant United States Attorneys

For the Defendant: FEDERAL DEFENDERS
BY: LISA HOYES, ESQ.

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1 that both sides have submitted in connection with
2 sentencing. Thank you both for them, but I understand that
3 really could be more of a 3553 issue than a guideline
4 computation issue; is that right?

5 MS. HOYES: Yes, your Honor.

6 THE COURT: So we'll deal with it in that setting.
7 Any objection to the presentence report or the guideline
8 computation?

9 MS. HOYES: No, your Honor.

10 THE COURT: How about from the government?

11 MS. AHMAD: No, Your Honor.

12 THE COURT: So the advisory range, as I understand
13 it, is 292 to 365, but it's capped to 360, right?

14 MS. AHMAD: That's correct.

15 MS. HOYES: Yes.

16 THE COURT: Okay.

17 There's some paperwork that's been submitted to me
18 in connection with conditions of confinement prior to the
19 extradition. It's my intention to deal with that, to the
20 extent there is a dispute between the parties, to deal with
21 that by reference to the papers and not in any other way.

22 Any objection to that, Ms. Hoyes?

23 MS. HOYES: No, your Honor.

24 THE COURT: How about you?

25 MS. AHMAD: No, Judge.

1 THE COURT: Okay. All right.

2 Would you like to be heard with regard to the
3 appropriate sentence?

4 MS. HOYES: I would, your Honor.

5 Your Honor, we understand how serious this crime
6 is, and we seek a sentence here of 15 years, which is a huge
7 amount of time. It is a sentence that sends a strong
8 message to foreigners considering joining Jihadist groups.
9 It's a sentence that would substantially punish Mr.
10 Babafemi. And it is a sentence that would keep him
11 incapacitated until he's an old man by Nigerian standards
12 anyway.

13 He renders his wife a life without a partner, and
14 it's extremely likely that his mother will die while he's in
15 custody here in the United States.

16 Prison will be harsher for him than for others
17 because he has absolutely no ties to this country. He will
18 never get a visit, have extremely minimum phone contact with
19 his family, which has been the case the entire time he's
20 been incarcerated here, and he will continue to suffer the
21 symptoms of posttraumatic stress disorder.

22 Your Honor, the Department of Probation evaluates
23 every single terrorism case, every single terrorism
24 defendant that is sentences in this courthouse. They are
25 familiar with the range of conduct involved in these cases.

1 (Side bar)

2 MS. HOYES: Your Honor, can my client come up
3 here?

4 THE COURT: Yes, that's fine. Bring him up, here,
5 please.

6 MS. HOYES: Sorry to interrupt. I just noticed
7 you mentioned the conditions of confinement. You refer to
8 it as torture, and I know last night in your ruling that
9 that information is all unsealed and available to the press.
10 I wanted to make sure I wasn't missing anything.

11 THE COURT: You are not.

12 MS. HOYES: Before I make any public statements.

13 THE COURT: I was being unnecessarily circumspect.

14 MS. HOYES: Thank you.

15 THE COURT: Okay.

16 (Side bar ends)

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1 Slow down, please.

2 MS. HOYES: -- I understand Islam to be the
3 religion of peace and harmony. Even the profit Mohammed
4 preached peace and unity, and not the act of brutality and
5 barbarism. The Islam that we are seeing through the world
6 is the so-called Islam Mr. Babafemi rejects of the violent
7 extremists. It has been demonstrated repeatedly in the
8 letter to your Honor, and the way he comported himself in
9 this case since his arrest.

10 He made days of inculpatory statements to the FBI
11 and consented to extradition, and accepted responsibility
12 swiftly by pleading guilty to this case, and done in the way
13 he's comported himself in jail.

14 Mr. Babafemi has been at the MCC for approximately
15 two years now. He's been in general population for the vast
16 majority of that time. That means for two years he has been
17 observed on a daily by prison officials at the MCC. And I
18 want to tell you what I think is not one of the strongest
19 objective indicators, but he's not a dangerous person or
20 dangerous Jihadist. There was a rather young man that was
21 arrested for conspiring to join ISIS, and I happened to
22 represent that young man as well. BOP placed that young man
23 in the same unit as Mr. Babafemi. Not only that, the unit's
24 counselor brought this young man to Mr. Babafemi's cell
25 early one morning and asked him if he would befriend him and

1 United States, but never met another American person until
2 he was extradicted here for this offense. He never received
3 any benefits or tastes of what this country has to offer.
4 And when he knows something through the lens of propaganda,
5 I submit it is possible to believe these hideous things.
6 And in jail what Mr. Babafemi has instead learned is about
7 the humanity of the American people. He's come to know
8 criminal defendants and prison guards and lawyers. He's
9 learned that Americans are people like him, people who have
10 mothers and fathers and who love their children. And I
11 submit that betrayal exists when a person lives amongst us
12 and wants to destroy us is something uniquely disturbing
13 that is completely absent from this case. Mr. Babafemi now
14 knows America has no animosity towards the country and its
15 people.

16 We talk about what are mitigating circumstances.
17 It is something about what is happening, the way things
18 happen in our lives that explain or shed light on our
19 misdeeds.

20 Mr. Babafemi as you know grew up in extreme
21 poverty in Nigeria, and I submit this is very different
22 growing up even with extreme poverty, possibly cutting
23 timber and eating wild animals, that is what he had to do to
24 feed his family. I can't think of a single analogy in the
25 U.S.

1 THE DEFENDANT: Yes, sir.

2 I want to say thank you for giving me this
3 opportunity to express my --

4 THE COURT: Excuse me for one second.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Could you put that microphone closer
7 to him.

8 THE DEFENDANT: I want to start by saying I am
9 extremely sorry for anything that I have done in the United
10 States, and I want to say that it doesn't come -- I want to
11 say I denounce al-Qaeda and the extremist groups of the
12 world.

13 Their actions and my understanding now is
14 obviously I don't understand Islam like that, and the way
15 they act in brutality towards everyone that was against
16 them. I want to say there were nights when I was in my cell
17 I was thinking about all what is going in Nigeria, and I
18 remember how ISIS took the journalist --

19 THE COURT: I'm sorry, how ISIS what?

20 THE DEFENDANT: Took the journalist and puts a
21 knife on his neck. I afraid to imagine myself in such a
22 condition, if I was to do that to somebody and put a knife
23 on my neck, and they start to sweat like animal. It was
24 extremely hard for me even to sleep at night, because I was
25 thinking how would they be feeling with that when that comes

1 indeed offended the Americans, because al-Qaeda has as our
2 number one enemy the United States, and help them in one way
3 or the other.

4 So, I will admit to my mistakes and I'm sorry.
5 And I hope this will end, so maybe I can make use of my
6 life, you know, my experience in people who need help in the
7 world that doesn't know what to do with their life.

8 THE COURT: How?

9 THE DEFENDANT: I believe there are many societies
10 -- they have been rejected by society. They think they are
11 less bother to even themselves, and from this they think,
12 you know, they come from the right body. I think I have to
13 make use of my life like this, joining maybe al-Qaeda or
14 ISIS or something like that. But I hope, I hope that with
15 the knowledge I gained after I was arrested, maybe I can do
16 something to ISIS to make them see through what I have been
17 able to see through, that life is not like that. There are
18 many ways to lead your life, even to be useful to
19 themselves, to their family, and to their society.

20 THE COURT: You mean to talk them out of it? Do
21 you mean to talk them out of joining Beko Haram or ISIS?

22 THE DEFENDANT: Yes, if it's possible for them.

23 In my unit, there was one Spanish guy who embraced
24 Islam maybe about four, five months ago. I was standing in
25 the unit and he came to me and we were talking. He said,

1 Also, that his time in Nigerian custody was
2 certainly below the standards of the Federal Bureau of
3 Prisons, and therefore he should be given some credit for
4 that.

5 While we disagree with the point to the best of
6 our ability some evidence undermining the defendant's claim
7 that he was beaten while he was in custody and during his
8 interrogation, we certainly do agree that the conditions of
9 confinement there in terms of the facility and access to
10 medical care and the like, were sub-standard and below what
11 one would find in a BOP facility.

12 I think the most difficult issue presented today
13 under the statute is the question of what sentence will be
14 sufficient to protect the public from future crimes of the
15 defendant.

16 The defendant has put forth a forceful case that
17 he is a changed man, and has no intention to continue along
18 the path to violent Jihad upon which he started.

19 We believe that to a large extent his denunciation
20 of al-Qaeda, upon which he relies on making that point,
21 rings hollow. That is principally because all of this
22 rejection of these violent extremist beliefs and of his
23 support for the goals of these sort of groups is not
24 accompanied by any reckoning of his adoption of those
25 beliefs. In fact, he barely admits to ever having adopted

1 violent actions against the West in any and all forms.

2 He, along with another American citizen Samir
3 Khan, pioneered the publication of Inspire magazine, whose
4 goal, again, as described by AQAP, was to inspire and
5 counsel people as to how to commit lone-wolf attacks in the
6 West. The defendant knew this. He read Inspire before he
7 left on his trip to Yemen. He discussed Inspire with other
8 people in Yemen.

9 More importantly, in December 2009, right around
10 the time the defendant embarked on his first journey to
11 Yemen, AQAP was in the news for having recruited a Nigerian
12 citizen to travel to Detroit and attempt to detonate a bomb
13 sewn into his underwear over U.S. air space. The defendant
14 was well aware of this, as he has admitted. All of this was
15 in his head before he undertook the first arduous journey
16 from Nigeria to Yemen, illegally crossing borders, going
17 through many military checkpoints from Cameroon to Chant, to
18 Chad, to Sudan, then smuggled by boat to Yemen, and then
19 smuggled in a bus to his ultimate destination.

20 So the fact that the defendant says it wasn't
21 until the United States submitted -- indicted him and
22 submitted an extradition request that the question "What
23 does my crime have to do with America" ever occur to him is
24 simply not credible. That's what AQAP was known for, its
25 targeting of America; its targeting of the West.

1 coconspirator at his request sent an e-mail to al-Qaeda
2 letting them know that he had arrived, and that ultimately
3 led his being taken to various AQAP stake houses, where he
4 met other foreign fighters associated with the group, to
5 receive weapons training, and work on AQAP's communications
6 language media operations.

7 According to at least two people who were with the
8 defendant during that time period, he was a dedicated,
9 excited, and enthusiastic recruit to AQAP.

10 Again, it bears emphasis that all of the evidence
11 shows that the defendant went to Yemen with this goal. The
12 defendant had never admitted that you. He has given all
13 sorts of inconsistent statements about how he fell in with
14 al-Qaeda. But the one consistent part is that he insists he
15 didn't go to Yemen with that intention.

16 According to the letters from his family, he gave
17 them all sorts varying explanations. I think his mother
18 says he went to go get a job. His wife says he went to
19 study Islam. I'm not sure what he told everyone else, but
20 he doesn't seem to have ever really tell the truth about it.
21 The reason that's relevant here is because it's hard for us
22 to really rely on his assertions that he's changed his mind,
23 when he cannot come to terms with whether he made up his
24 mind in the first place to engage in violent Jihad.

25 According to the people who were in Yemen with the

1 security measures, how the members of the group dealt with
2 the internet and phone, and the precautions they took, how
3 they navigated through the area in order to avoid being
4 caught by Yemenese authorities, that al-Awlaki would let
5 someone with all of this information whom he didn't trust
6 leave Yemen, first and foremost, and on top of that go to a
7 country with an alliance with the United States, where he
8 would be able to reveal that information to anybody he chose
9 is simply not credible.

10 Again, I think the defendant's continual
11 misstatements on this regard, continual insistence that
12 firstly he never really fell in with AQAP wholeheartedly;
13 and, secondly, that even the actions he undertook on their
14 behalf were under duress, suggests that his true feeling
15 about this group and its goals are not known to us or to the
16 Court at this time, and that his words cannot be taken at
17 face value.

18 What we do know about al-Awlaki at this time, and
19 AQAP at this time, is that the group was focused on attacks
20 in the West. The group was looking for foreign fighters,
21 meaning people with access to the United States and Europe.
22 The defendant's brother has been to the U.S. multiple times
23 for work as a respected executive in a multi-national
24 company. Has another brother who lives in the U.K., could
25 reasonably be expected to be somebody who would have a visa

1 doesn't quite comport with the idea that he was running
2 afraid from al-Qaeda and Yemen at that time. He tried to
3 recruit people to go to Yemen, including his close friend
4 and co-conspirator Luqman Babatunde. Not somebody he did
5 not at all care about, since he would happily go to the
6 wolves for, somebody he cared about a lot. He tried to
7 recruit him to go to Yemen and told Babatunde that he would
8 either go back with him or meet him there, suggesting that
9 the defendant himself was intending to return to Yemen.

10 All of that goes to suggest that the defendant was
11 up to more than we can now -- then we can prove he was up
12 to. We are not asking your Honor to hold him responsible
13 for any theoretical plot or the like, but only for his
14 actions. I bring this up because again his consistent
15 denials and refusals to acknowledge his motivation, his
16 agreement, and his actions cast significant doubt upon his
17 expressed denunciation and remorse, and I think all of that
18 goes into the ultimate question of what sort of sentence is
19 necessary to protect the public from the defendant's future
20 crimes.

21 He certainly appears to have been a model
22 prisoner. I don't take any issue with his claims to that
23 front, or with anything that counsel or he has said about
24 his time in the MCC. But I think all of that is readily
25 understood, is the defendant's desire to -- understandable

1 lower sentence. There are certainly some people who come
2 into the system and use it as a platform for espousing those
3 views, but that's a personal decision that people make.
4 It's not what al-Qaeda teaches its recruits they should do
5 or advises them to do. In fact, most of the advise given is
6 how to get yourself out of a jam.

7 So I don't think that they would view his
8 denunciation or actions here as anything less than trying to
9 get himself out of this situation. And, in fact, I think it
10 would be a source of great pride and a way to stick one's
11 fingers in the eye of the United States, if in fact after
12 all of this time he would then rejoin the fight and was
13 heralded as a hero who in fact had beat the U.S. at its own
14 game and the like.

15 So, I don't think that it would at all negatively
16 affect his ability to rejoin the fight. I think he
17 certainly would be a much more valuable member for having
18 gone through this process and gone through U.S. prison and
19 come out on the other side.

20 THE COURT: Is there like a track record of folks
21 who have denounced al-Qaeda and then come back to it
22 after?

23 MS. AHMAD: Well, there's certainly been people
24 released from Guantanamo Bay who gave up significant
25 inculpatory information about al-Qaeda to the U.S.

1 according to the government, is his one interest.

2 You know, the crux of the government's argument is
3 that it is not possible that Mr. Babafemi changed. It's not
4 possible that someone like Mr. Babafemi could change. If
5 that's the case, we are in a great deal of trouble here in
6 this world. There are a lot of people who are getting swept
7 up and going abroad, and we need to figure out ways to
8 retrust them. We are not going to incarcerate -- the U.S.
9 is certainly not going to incarcerate its way out of it.
10 It's not impossible to change. I think it's entirely
11 consistent with human nature. What we know about even
12 people who are swept up in some theoretical fanaticism, that
13 they get a taste of it and it's not what they thought it was
14 and it's not for them, and they think about it some more and
15 they reflect, and that's what happened with Mr. Babafemi.

16 One fact that the government leaves out that I
17 think is critical to this analysis is the fact that Mr.
18 Babafemi did not hold to his agreement with al-Awlaki. He
19 didn't return to Nigeria to recruit people. He went on to
20 Saudi Arabia where he knew Nigerians could get work. He
21 took the money and went to Saudi Arabia. For all we know
22 he would have been in Saudi Arabia to this day, if he
23 hadn't been found there undocumented and deported back to
24 Nigeria. He didn't reach out to al-Qaeda or AQAP, or
25 anybody while he made off to Saudi Arabia.

1 outlook. I think those things are incompatible.

2 In any event, to back up to what I think are more
3 important considerations.

4 You know, the nature and circumstances of the
5 offense, that's the first factor listed under 3553(a)(1),
6 and here it is hard to conjure a more serious offense.

7 He, the defendant, sought out and joined this
8 terrorist group. I agree with -- I draw the inference the
9 government wants me to draw that he was aware, given the
10 chronology of events, the chronology of the so-called
11 "underwear bomber crime," and this defendant's journey to
12 Yemen, that he was well-aware that this was a terrorist
13 group that was willing and indeed determined to attack
14 Americans and Europeans in their homelands. This is not a
15 defendant who was sitting in his home connecting to al-Qaeda
16 and the Arabian Peninsula online. He wasn't cajoled into
17 the activity that got him arrested by government agents. No
18 need to wonder whether he would have done what he did but
19 for the initiation by government agents of the events that
20 led to his arrest.

21 In a very real sense, this defendant certainly was
22 - got a little issue about whether he still is that we just
23 gone over - but he certainly was the real deal when it comes
24 to terrorists. He made a couple of very difficult journeys
25 from Nigeria to Yemen. He met with the highest level of

1 years ago that had as one of its features an ability to take
2 a second look at someone, after some period of incarceration
3 passes. In this case, and in many others, I find myself
4 second-guessing whether we gave up too much in the interest
5 of the certainty that the abolition of parole advances. It
6 would be nice. You know, it is a factor. It may not be the
7 most compelling factor, in my view, in this sentence, but
8 whether or not there's a need to incapacitate this defendant
9 so he doesn't rejoin the fight is an important
10 consideration. And it's not exactly the easiest thing in
11 the world to assess how genuine and sincere he is in
12 purporting to have turned away from the beliefs that led him
13 to go to Yemen.

14 He tells me here today that he wants to have an
15 opportunity to set straight other young would-be Jihadists.
16 And although the government has made a fairly powerful
17 credibility argument, as I mentioned earlier, I don't think
18 his inability to hold himself accountable for his behavior,
19 and the government has a good point there, it's incompatible
20 with his denunciation. I wish I had a better feel for how
21 genuine it is. I think I need to -- I know I need to know
22 now in 2015, not ten years from now, make some kind of a
23 judgment as to whether Mr. Babafemi will no longer be a
24 Jihadist when he gets out of prison. I wish I had a better
25 feel for it.

1 Bureau of Prisons.

2 Thank you, everyone.

3 MS. HOYES: Thank you, your Honor.

4 MS. AHMAD: Thank you, Judge.

5 (The proceedings are concluded.)

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